

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

MELVIN LAMPTON,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 4:19-cv-00734-NKL
C. R. Bard, INC. and BARD)	
PERIPHERAL VASCULAR, INC.,)	
)	
Defendants.)	

ORDER

Before the Court is Defendants C. R. Bard, Inc., and Bard Peripheral Vascular, Inc.’s Notice of Adoption of Bard’s Motion to Exclude the Opinions of Robert McMeeking, Ph.D. Doc. 94. Bard adopts and incorporates its Motion and Incorporated Memorandum to Exclude the Opinions of Dr. McMeeking and Memorandum of Law in Support as filed in the multi-district litigation (“MDL”) proceeding before the Honorable David G. Campbell in the United States District Court for the District of Arizona, *In Re: Bard IVC Filters Product Liability Litigation*, No. 2:15-MD-02641-PHX-DGC (D. Ariz.), Doc. 94-1, MDL D.E. 7314. In his suggestions in opposition, Plaintiff Melvin Lampton incorporates the briefing filed in the MDL proceeding. Doc. 132-1, MDL D.E. 7806. In its reply suggestions, Bard incorporates its briefing filed in the MDL proceeding. Doc. 153-1, MDL D.E. 8227.

The MDL court granted in part and denied in part Bard’s Motion. Doc. 132-2, MDL D.E. 10051. It granted the motion to exclude Dr. McMeeking from (1) opining that Bard was not “frank and honest” with the FDA in its technical filings, *Id.* at 8; (2) opining as to the relative rates of filter complications after comparing the Bard filter to other filters to the extent that

opinion entirely relies on the opinion of Dr. Betensky, another expert witness in this case, *Id.* at 8; and (3) opining that an SNF filter would have been a safer alternative to a Bard filter for any particular plaintiff. *Id.* at 10. It denied the motion to exclude Dr. McMeeking from (1) opining from an engineering perspective that certain information Bard provided to the FDA was not correct, *Id.* at 8; and (2) opining as to whether the permanent SNF filter was, in general, a safer device than Bard's retrievable filters. *Id.* at 10. Finally, the MDL court did not exclude Dr. McMeeking's opinion that "Bard failed to eliminate risks as far as reasonably practical through inherently safe design and manufacture." *Id.* at 5. The MDL court was unable to ascertain which parts of Dr. McMeeking's report or rebuttal report Bard sought to exclude and was unsure if plaintiff was even intending to elicit testimony on this subject at trial. Consequently, the Court ruled that specific objections relating to Dr. McMeeking's opinions on the design and manufacture of Bard's filter would have to be resolved at trial on a case-by-case basis. *Id.* at 6-7.

Because the MDL court's order denying Bard's Motion to Exclude was interlocutory, the law-of-the-case doctrine does not apply, and this Court is not bound by its ruling. *Gander Mountain Co. v. Cabela's, Inc.*, 540 F.3d 827, 830 (8th Cir. 2008) (internal citations committed). However, considerations of comity and judicial economy weigh against disturbing the MDL court's rulings. *See Fenner v. Wyeth*, 912 F.Supp.2d 795, 800 (E.D. Mo. 2012); *see also Winter v. Novartis Pharmaceuticals Corp.*, 2011 WL 5008008, at *3 (W.D. Mo. Oct. 20, 2011) ("[P]rinciples of efficiency and comity make the Court hesitant to disturb the MDL court's ruling as doing so in the absence of a significant change of circumstances would frustrate the purposes of centralized pretrial proceedings.") (internal citations and quotations omitted). After careful review of the MDL court's order and the parties' briefing, this Court considers the order to be well-reasoned and supported by the law and evidence in the record. Furthermore, there has been

no change in circumstance that would justify reexamination. Consequently, this Court will not disturb the MDL court's decision.

For the reasons stated in the MDL court's order, Doc. 132-2, MDL D.E. 10051, Bard's Motion to Exclude the Opinions of Dr. McMeeking is granted in part and denied in part as set forth in that order.

IT IS SO ORDERED.

/s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: November 23, 2020
Jefferson City, Missouri